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March 12, 1997

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

VIA HAND DELIVERY

Mr. William F. Caton, Acting Secretary
Federal Communications Commission
1919 M Street, N.W. Room 222
Washington, D.C. 20554

Re: Waiver Request of Type Acceptance Rules, PR Docket No. 93-61
Expedited Action Requested

Dear Mr. Caton:

Pursuant to Section 1.41 of the Commission's Rules, 47 C.F.R. § 1.41, Delco Electronics Corporation ("Delco"), by its attorneys, hereby respectfully requests a temporary waiver of the Commission's Rules requiring type acceptance of non-multilateration Location and Monitoring Service ("LMS") equipment, 47 C.F.R. §90.203(b)(7) or, in the alternative, special authority to continue to market non-type accepted non-multilateration LMS equipment until May 1, 1997, the date by which Delco expects to have its non-multilateration LMS equipment type accepted. Delco needs the requested relief so that it may meet certain contractual obligations that are due prior to May 1, 1997.

I. INTRODUCTION

Delco has been involved for several years in the development of various transportation projects that use non-multilateration LMS systems. In particular, Delco has participated in the design and implementation of the Vehicle to Roadside Communications System ("VRC System") whose purpose is to respond effectively and cost-efficiently to a variety of existing and projected Intelligent Vehicle Highway Systems (IVHS) requirements. The VRC System consists of a roadside communications infrastructure and vehicle transponders. Based on

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a variety of applications and customer needs, Delco has designed and manufactured a flexible and expandable family of VRC transponders.

Delco has engaged in various marketing activities for its transponders over the past several years, including the time period after September 1, 1996. It has contracted with customers (in both the private and public sectors) for the sale of transponders for use in various VRC System applications that address public safety and environmental concerns. The next two customer shipments of Delco transponders (to a state government and a commercial entity for use in a public/private venture) are scheduled for March 14, 1997.

II. BACKGROUND

In 1995, the Commission allocated spectrum and adopted rules for the further licensing and continued development of LMS systems.¹ In the *Report and Order*, the Commission ordered that all LMS equipment imported or marketed after April 1, 1996 be type accepted for use under Part 90 of the Commission's Rules.²

On reconsideration, the Commission extended the type acceptance deadline to September 1, 1996.³ The Commission also made an exception to the type acceptance deadline for non-multilateration systems because "non-multilateration LMS systems do not present a significant potential for interference."⁴ Specifically, the Commission stated that "if non-multilateration system operators decide either to build new systems or replace existing equipment on or after September 1, 1996, the new equipment must comply with type acceptance by April 1, 1998."⁵ Based on this language, Delco continued to market its transponders, by entering into various sales agreements with customers, believing that it was not required to type accept its transponders for use under Part 90 of the Commission's Rules prior to April 1, 1998.

After further very recent inquiry of the Commission staff, Delco discovered that the type acceptance extension was being construed to apply only to licensees of non-multilateration systems, not to manufacturers. Licensees are permitted to install non-type accepted equipment that they had purchased already up to April 1, 1998. After that date, all

¹ See Amendment of Part 90 of the Commission's Rules to Adopt Regulations for Automatic Vehicle Monitoring Systems, *Report and Order*, 10 FCC Rcd 4695 (1995) (the "*Report and Order*").

² *Id.* at 4739.

³ See Amendment of Part 90 of the Commission's Rules to Adopt Regulations for Automatic Vehicle Monitoring Systems, *Order on Reconsideration*, 61 Fed. Reg. 18981 (rel. March 21, 1996) at ¶ 36.

⁴ *Id.*

⁵ *Id.*

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equipment that is installed must be type accepted. Any non-type accepted equipment in place after April 1, 1998 does not need to be retrofitted and the equipment can be used until it needs replacement.

III. REQUESTED RELIEF

In light of this ambiguity as to the application of the April 1, 1998 deadline, Delco respectfully requests that the Commission waive Section 90.203(b)(7) of its rules requiring type acceptance of LMS equipment by September 1, 1996 as it applies to Delco's soon-to-be-filed type acceptance applications for LMS equipment. In the alternative, Delco requests special authority to continue to market such non-type accepted equipment until May 1, 1997 or until the Commission completes its review of Delco's type acceptance applications. Delco has completed its type acceptance applications (including the necessary testing at an FCC-approved facility) and will be filing them shortly with the Commission. Assuming the Commission processes Delco's type acceptance application within 40 days,⁶ Delco will be in full compliance with the Commission's type acceptance requirements by May 1, 1997.

The Commission adopted the type acceptance rules to ensure that LMS equipment will no longer be used if it causes impermissible interference with other systems nearby. The Commission recognized, however, that non-multilateration systems do not present significant risk of interference compared to multilateration equipment. The Commission's underlying policy will not be frustrated by the grant of this temporary waiver or special temporary authority because Delco is confident that its equipment meets the Commission's type acceptance standards and that the Commission will grant the Delco transponders' type acceptance applications.

For the foregoing reasons, Delco requests that the Commission grant the relief requested.

Respectfully Submitted,
DELCO ELECTRONICS CORPORATION



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⁶ *Id* at ¶ 35.